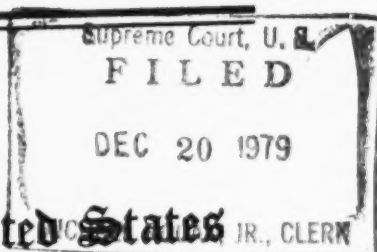


IN THE
Supreme Court of the United States JR., CLERK
OCTOBER TERM, 1979



No. 79-738

JOETHELIA PALMER,

Petitioner,

vs.

**BOARD OF EDUCATION OF THE CITY OF CHICAGO,
a body politic and corporate, JOSEPH P. HANNON, RAY-
MOND C. PRINCIPE, GERARD J. HEING, BESSIE F.
LAWRENCE, NINA F. JONES, JAMES G. MOFFAT, and
FLORENCE H. PASKIND,**

Respondents.

**REPLY IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.**

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To: The Honorable Justices of the
Supreme Court of the United States:

The brief in opposition to the Petition for Writ of Certiorari herein filed by Respondents is so misleading and improper that Petitioner is compelled to file this reply. While accusing Petitioner of inaccuracies in the statement of facts contained in her Petition, Respondents deliberately seek to mislead this Court as to the actual facts of this case. Indeed, they attempt to deny the central fact in the case. In so doing, they refer to some action taken by the Board of Education which is not of record in this case and which cannot properly be considered.

FACTS.

The facts are as set forth in Petitioner's Statement of Facts. On December 21, 1977, Petitioner was informed by the General Superintendent of Schools that as of December 23, 1977, he would seek her termination based upon her refusal "to participate in the salute to the flag and patriotic assembly and to teach the words of the National Anthem," as well as the other reasons set forth therein. It was upon this action that Plaintiff immediately filed suit on the very same day she received that letter, December 21, 1977, seeking a temporary restraining order, as well as preliminary and permanent injunctions. It was upon this document and this document alone that the case proceeded, in both the District Court and the Court of Appeals. No other action by the Board of Education was considered.

It is true that in lieu of the entry of a temporary restraining order, and pending hearing on Petitioner's Motion for Preliminary Injunction, the Board of Education refrained from carrying out the threatened termination of Petitioner from her teaching position. The action of the Board of Education terminating Petitioner's employment to which Respondents refer, which is not a part of the record to this cause, was taken *after* the District Court had rendered its decision in this case. The District Court at no time considered that action, nor was it called upon to do so.

To contend, as Respondents do, that the action taken against Petitioner was not based upon her refusal to participate in the salute to the flag and teach the words of the National Anthem, but for some other reason, is to attempt the most flagrant of deceptions. It is shocking that an officer of this Court would attempt to mislead this Court in such a manner.

I.

PETITIONER'S RIGHTS OF FREEDOM OF EXERCISE OF HER RELIGION HAVE BEEN VIOLATED.

This case does not deal with mere curricular nonconformity as Respondents allege. As we have asserted in our Petition, and as is borne out by the Record in this case, the Board of Education of the City of Chicago has no curriculum which requires Petitioner to teach the Pledge of Allegiance to the Flag, the words to the National Anthem, or various holidays. As is demonstrated by Respondents, the only rule to which the Board of Education can refer as having been violated by Petitioner is a rule which states in full:

"Principals of schools are the responsible administrative heads of their respective schools and are charged with the organization, supervision, administration, and discipline thereof. They shall establish and enforce such regulations, not contrary to the rules of the Board of Education or the regulations of the General Superintendent of Schools, as in their judgment may be necessary for the successful conduct of their schools."

To contend that this is a specific curriculum requirement officially adopted by the officials duly responsible for the policy-making function of the schools is to fly into the face of all reality. All that this rule says is that the curriculum at any particular school shall be what the principal of that school decides it should be at any given time. Such a rule cannot form the basis for a conclusion that Petitioner has refused to follow a properly and appropriately adopted curriculum requirement. As we have demonstrated in our Petition herein, there are no specific curriculum requirements which Petitioner has failed to follow, for the simple reason that there are no specific curriculum requirements.

The absence of such requirements was acknowledged by the Court of Appeals which nevertheless held that Petitioner was being discharged for failure to teach items which are "tradi-

tional." (Appendix to Petition for Writ of Certiorari, A12) Constitutional rights are not so evanescent as to be transcended by what certain portions of society feel to be "tradition."

Respondents admit that this Court has not yet had occasion to consider the issue presented by this case. Petitioner respectfully submits that this case is the ideal vehicle to be used for consideration of those matters. The central issue to be decided here is whether a public school teacher may be compelled, upon pain of loss of employment, to teach specific matters of a "patriotic" or "traditional" nature which contravene honestly held religious beliefs. We deal here with matters central to our basic constitutional guarantees. Does an individual lose all rights to freedom of conscience and religious belief by accepting public employment? Is the teaching of "symbols" more important than the freedom to entertain religious beliefs which may differ somewhat from the mainstream of contemporary thought? Must every public school teacher join in lockstep with the majority? Is there no leeway for difference of opinion in matters of patriotism? We do not deal here with a teacher who has attempted to proselytize others. We deal here with silence. This Court should address these issues so that the rights of public employees such as Petitioner are clearly defined.

Every other Court which has considered the issues presented here has reached a conclusion opposite to that of the Courts below in this case. Where we deal with rights so fragile and easily impinged upon, constant vigilance is required. No violation of such rights is too small or insignificant for consideration.

II.

PETITIONER HAS BEEN DENIED DUE PROCESS OF LAW.

The second issue presented here is whether the exercise of First Amendment rights are contained within the definition of that broad and majestic term "liberty." Again, the importance of

this issue cannot be gainsaid. It is worthy of consideration and explication by this Court.

We would have thought it well settled that the rights guaranteed by the First Amendment are protected by the procedural requisites of due process. Yet, the District Court and the Court of Appeals below have denied that proposition.

Respondents claim that the right to due process depends upon the ability to prevail upon the substantive issue. To so claim is to deny the very basis and purpose of due process. Due process is a procedural protection. It comes into play whenever a liberty right is at stake. Whether the individual will prevail on the constitutional claim depends upon the facts as explicated during the hearing mandated by due process. Until that hearing is held there is no basis for deciding whether the constitutional right has been violated or not. Without a hearing there are no facts. To fail to understand this is to negate the very concept of due process.

Again, the Courts below in this case have ignored the clear holdings of this Court. This Court should so declare.

CONCLUSION.

For the reasons stated above, and the reasons set forth in our Petition for Writ of Certiorari, this Court should grant the Petition herein.

Respectfully submitted,

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